

**M.Cr.C. No.83/2012**

**04/10/2017**

None for the petitioner.

Shri A. Chouhan, learned counsel for the respondents.

Heard finally.

**ORDER**

This petition preferred under Section 482 of Cr.P.C. is directed against order dated 30.11.2011 passed by VI Additional Sessions Judge (F.T.C.), Ujjain in Criminal Revision No.298/11, whereby the learned revisional Court declined to interfere in order dated 03.08.2011 passed by learned Judicial Magistrate First Class, Ujjain in unregistered Criminal Complaint Case No.0/11 (Smt. Manorama vs. Ku. Rashmi & Ors.).

The learned Magistrate, vide order dated 03.08.2011 declined to issue process against the respondents in a complaint case filed by the petitioner for offences under Section 420, 465, 467, 468, 471 & 120-B of IPC on the basis of averments that the respondents No.1-4 have prepared a forged Will purporting to be executed by one Naveen. The petitioner claiming to be the sole successor of Naveen alleged that the respondents No.1-4 in order to grab the properties of Naveen have fabricated the Will. The learned Magistrate after recording evidence under Sections 200 & 202 of Cr.P.C. vide order dated 03.08.2011 declined to issue process against the respondents holding that already two succession matters are pending before the Competent Court, wherein the question

with regard to validity and legality of the Will is sub judice. Apart that, the petitioner has also the remedy to file a regular civil suit for deciding that the Will is forged. The learned Magistrate also found that the evidence submitted in support of the complaint is discrepant. Accordingly, prayer to issue summons was refused. The order passed by the learned Magistrate was challenged by way of revision before the VI Additional Sessions Judge, who vide the impugned order had declined to interfere in the order passed by the Magistrate.

Heard the learned counsel for the parties and perused the record.

The respondents have put forth a Will purported to have been executed by Naveen whether the Will was validly executed by Naveen or not is something sub judice in the proceedings before the Competent Court from where issuance of succession certificate was prayed. When the question regarding validity of Will is sub judice, criminal prosecution on the allegation of the Will being a forged one is misused of the criminal process (See: *Sardool Singh & Anr. vs. Smt. Nasib Kaur, 1987 (Suppl.) SCC 146*). Apart that whether the Will is valid or not can be decided by a properly constituted suit as held by learned revisional Court so also by the learned Magistrate. Further there are serious anomalies in the testimony of various witnesses, which have been noticed by the revisional Court so also by the learned Magistrate, therefore, it cannot be said that learned Magistrate or for that matter the learned revisional Court has committed any legal

error in declining to issue process against the respondents, therefore, no ground is made out to interfere in the order passed by the learned revisional Court.

Accordingly, this petition deserves to be and is hereby dismissed.

**(Ved Prakash Sharma)**  
**Judge**

soumya